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No. 81-2234

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

ACME QUILTING CO., INC.,

*Petitioner,*

vs.

PERFECT FIT INDUSTRIES, INC.,

*Respondent.*

## PETITIONER'S REPLY MEMORANDUM

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The only points not previously discussed in Petitioner's Petition for Certiorari which need be made at this time are as follows:

1. Perfect Fit inaccurately contends (p. 10) that the Petition was filed out of time with respect to the first opinion of the United States Court of Appeals for the Second Circuit. Since that decision remanded the case to the District Court, it was not final, and this Court would have not had jurisdiction to review. The interlocutory decision became final only when the second opinion of the U.S. Court of Appeals for the Second Circuit was handed down. The Petition was timely filed within 90 days thereafter.

2. Perfect Fit argues (pp. 8-9) that the *Ives* cases are applicable because the issues presented in the petitions there and the issues actually reached by this Court therein are not involved here. While Perfect Fit correctly recites that this Court did not reach the issue involved herein in its June 1, 1982 decision, a reading of the opinions of the Court of Appeals in those cases makes it quite clear that the issue presented by us was one subsumed in the questions presented, and hence was before this Court, albeit that this Court remanded on that aspect of the case.

3. Perfect Fit has seen fit to annex as an Appendix excerpts from the record below. The same, of course, is not allowed by the Rules of this Court. Moreover, it is an attempt to prejudice the Court by unfairly taking selective excerpts from the voluminous record below. Petitioner, on the other hand, has limited the issues raised by it, and the facts presented, solely to the facts as found by the District Court, and as commented upon by the Second Circuit. We shall not supply selective excerpts on our part from the record below, for to do so would merely compound Perfect Fit's violation of this Court's Rules.

Respectfully submitted,

HERBERT MONTE LEVY
*Attorney for Petitioner*

Dated: New York, New York
July , 1982